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IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

JAMES DAVIS NELSON, JR.

PETITIONER/APPELLANT

V.

UNIVERSITY OF ALABAMA SYSTEM, ET AL.

RESPONDANTS/APPELLEES

PETITION FOR WRIT FOR CERTIORARI FROM

SUPREME COURT OF ALABAMA

REPLY BRIEF OF PETITIONER

James Davis Nelson, Jr.

Pro Se

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REPLY-REASONS FOR GRANTING THE WRIT FOR CERTIORARI

The Petitioner/Appellant incorporates all of his Writ of Certiorari into this Reply Brief.

The Respondants Affidavits and Briefs were willfully written in bad faith, a sham, nugatory and numberous reasons for Disbarment Orders for Attorneys Skidmore and Gordon. See the overwhelming Substantial Material Facts in Petitioners Affidavits (notice November 8,1989 Affidavitt can not be found in Clerks Record (hereafter CR.)

not be found in Clerks Record (hereafter CR.) CR. 827-852,992-1010,1029-1095 (note Affidavitt CR. 827-852 Exhibits (hereafter Ex.) are not to CR., but are in large Brown Folder), Mark Wiener Affidavitt Ex.2, Richrard Prewitt CR.768-774, Author Patricks CR. 765-767, A.G. Tramell, President AFL-CIO, Alabama CR.1087).

See, Woods v. Covington County Bank, 537 F 2d 804, states,

"Requirement that a lawyer avoid even the appearance of impropriety reflects the bar concern that some conduct which is in fact ethical may appear to the layman as unethical and thereby could erode public confidence in the judicial system or the legal profession; similarly conscious of the need to keep both the public and private segments of the profession above suspicion, courts have disqualified attorneys under the appearance of evil doctrine even though the record was free of any evidence of actual wrong-doing."

See, Bobal v. Rensselaer polytechnic Institute, 916 F2d 759 (2d Cir. 1990),states,

"Pro-Se papers are to be held to be held to

less stringent standards than formal pleadings drafted by lawyers.

Pro Se litigant should be afforded every reasonable opportunity to demonstrate that he has a valid claim. id."

State, Dept. of Mental Health v. Allen,Ind. App., 427 N.E.2d 2,4th Dist 1981, states,

" A person's duties in performance of an act after he has determined whether or not it should be done are ministerial, and for neglience of such performance he may be held liable."

Long v. Seabrook, 197 S.E.2d 659(S.C.1973),

"Failure of public official to comply with laws governing and regulating his powers and duties may give rise to liability.

Before recovery can be had in tort suit against public officals whose duties are discretionary, it must be shown that in performance or nonperformance of such duties, offical was guilty of corruption, or bad faith, or influenced by malicious motives. id."

UNITED STATES SUPREME COURT RULES (USSCR) violations,9.2,Skidmore not record attorney

in lower court and willfully neglected to enter a seperate notice of appearance. The Attorneys have exhibited conduct unbecoming of a member of the Bar (USSCR 8). Attorney Skidmore is a Witness, with Willfull, Malicious, Outrageous, Involvement in the Conspiracy of tampering with Physical Evidence, Withholding Records,Deleting Records, Altering Records, Dening Petitioners Due Process Rights, Defying Federal Statuates, Federal Regulations, Criminal Codes, Inducing Petioner into Self Incrimination, Not Conforming to University Regulations and Attorney Skidmore did Willfully, Malicious DEFY GOVERNOR HUNTS ORDERS to get Mr. Nelson his Records (Property),and to Process Mr. Nelsons Grievances.

Petitioner has numberous Academic Grievances againest The Universitys Office of Counsel for Defying Federal Statuates and Regulations. Responants Attorneys have willfully not conducted themselves uprightly, intentionally Violating (SSSCR. Rule 5)

Respondants' Attorneys have constantly and consistantly, willfully, maliciously through out Respondants Brief (hereafter R.Brief), LIED! R.Brief p.4, LIE through creating a Unttruthful definition," An Academic Grievance is a complaint about an action which directly affects the grade that a student recieved on a test or in a course." "... Academic Grievances do not encompass student complaints about conduct of faculty members or administrators that are unrelated to grades or course requirements. This is A LIE whereas Petitioner presented in Affidavits, Exhibits, (see CR.831-833) the University of Alabama Faculty Handbook page 60,last sentence (Ex38b), " the Academic Grievance policy describes the process to be followed by students who believe they have been treated unfairly. (see Ex.3), University Wide Academic Grievance Procedures, I.A.[... Examples of academic grievances include, but are not limited to, allegations of unfairness in grading, alleged violation of a written or oral agreement with a student...

and alleged inconsistant applications of existing policies.

For a protest of a final course grade or other final comprehensive evaluations to be considered, the protest must be based upon one or more grounds and upon allegation that the ground or grounds cited influenced the grade assignment to the students determent:

1. Arithmetic or clerical error. 2. Arbitrariness, possibly including discrimination based upon race, sex, religion or national origin of the student. 3. Personal Malice (see Ex.1,6,15,24,28,) (see CR. 1076, lines 24-26) Dean Awtrey documented that she told Mr. Nelson that if he thought he had been treated unfairly he could file an Academic Grievances. (see CR. 833)

The FACT is not until Respondants Affidavits , Attorneys Gordon and Skidmores' Brief have the ever told Petitioner that the Academic Grievances he filed weren't Academic Grievances whereas their Writings are a Sham Lie, written in Bad Faith, Intentionally !

(see CR.831-833). The Fact is the University Wide Grievance Procedure is so Vague it does not muster Constitional Validity, where as Petitioner filed Academic Grievances against the desiners and editors of the University Wide Grievance Procedure, because of it's Vagueness.

See Equal Employment Opportunity Commission v. U.S. Pipe & Foundry Co., 375 F. Supp.237 (D.C. Ala. 1974),states

" Agency which confers benifit by its regualations to party in proceeding before it may not capriciously deprive party of that benifit.

SeePeople v. Reyes, 155 Ill. Dec. 757, 569 N.E.2d. 1368 (Ill. App. 2Dist. 1991),

"Statute is unconstitutionaly vague and Violative of due process if its meaning cannot be readily ascertained by individual of ordinary intelligence.

See Equal Employment Opportunity Commission v. Louisville & N.R. Co., 368 F. Supp. 633 reversed 505 F.2d 610, rehearing denied 508 F.2d 842, certiorari denied 96

S.Ct. 39, 423 U.S. 824, 46 L.Ed.2d 41, (D.C. Ala.1974), which holds,

"where a regulation promulgated by an administrative agency is designed to create important procedural rights, the agency must follow that reulation closely."

Respondants and Attorneys willfully, maliciously, in bad faith tampered with Physical Evidence, changed records,altered records, deleted, created, withheld, distroyed, distributed and disclosed Petitioners records without his written consent.

Dean Mobley's Affidavit reveals , she, Ms. Adams, Ms. Nelson conspired to deprive petitioner of equal oportunity and property rights (records) by willfully maliciously not grading to University Policy(see Mr. Prewitt's and Petitioners Affidavits).

Dr.Sayers, Dr.Crump, Attorneys Murphy and Goodwin conspired to induce (by LIEING) Petitioner (witness) into an illegal meeting where Dr. Crump and Attorney Goodwin Willfully, Maliciousily, In Bad Faith constantly and consistantly, illegally improperly

questioned Petitioner about Civil Matters. (see Mr. Patrick's and Petioner's Affidavit) Petitioners Records are his Property.

See, Buskey v. Town of Hanover, 577 A. 2d 406 (N.H.1990), states,

" Right to use ones own property is a fundamental right procted by both State and Federal Constitutions.

"Propety" in constitutional sense means not tangible property itself, but rather right to possess, use, enjoy and dispose of property.

Respondant Brief (R.Brief), p.5, LIES, 1st paragraph (par.) "...not Academic Grievances." R. Brief last par., p.5,"...petitioner submitted to Dean Mobley Academic Grievances ...".(see CR.412,573-578,598-601,615-648).

on September 14,1987,Petitioner filed 1st Academic Grievance with Dean Mobley. Whereas she stated that she didn't have the authority to handle because of the illegal activities Ms. Adams Demanded the Petitioner to Peform. Dean Mobley did nothing.

It was first revealed through Dean Mobley's Affidavit, that she conspired with Ms. Nelson and Ms. Adams to have a hearing without informing Petitioner, therfore deneying his right to present evidence, witnesses,records and the right to be present to represent my Due Process Rights.

see, Board of Dental Examiners v. King, 364 So.2d 319, which held,

"Right to fair hearing is destroryed if an agency bases its findings on matters not introduced into evidence".

Petitioner accompanied by Mark Wiener took the Academic Grievances as described, to V.P.Roger Sayers, (see Ex.2,3), University Wide Grievance Procedures, Section I,B,3rd sentence "Grievances concerning matters that are not within the jurisdiction of a particular Academic Division and grievances against the dividisional academic Dean must be resolved by the Vice resident of Academic Affairs". Petitioner told Dr. Sayers that Dean said she didn't have authority to handle

because of the Illegal Activities the Petioner (student) was demanded to perform. Dr. Sayers told Petitioner since you do not have grievance against the Dean then it goes back to Her.(se Ex.2, Mark Wiener's Affidavit and Petitioners). Dr. Sayers furnished no evidence in rebut.

Respondant's Brief p.3,2nd paragraph, 2nd sentence is a LIE insinuating Petitioner was placed on indefinite suspension in 1986 fall semester because of his academic performance in the fall.Petitioner passed all courses and promoted into the upper division of Nursing School. (see CR.656). LIE, Last sentence p3,"Petioner failed...he did not sit for the NLN. (see CR.515), Dean Awtreys Affidavit, reveals the NLN is not calculated into students grade. (see Petitioners Affidavits).(see CR.860), Affidavit Attorney Gordon filed in the court and willfully neglected to send Petitioner a copy. Dean Awtrey reveals Ms. Adams could not and did not grade Petitioner according to Policy.

Respondant Brief p.5, paragraph 2, is misleading whereas Petitioner and Mark Wiener met with Dr. Sayers, whereas he willfully neglected to abide by Regulations. LIE, p.7, par.3,2nd sentence "Petitioner said that when he heard from these agencies, he would contact Dr. Crump to discuss resumption of the Academic Grievance Procedures." This is a LIE supported by Petitioner's and Mr. Patricks Affidavit. Respondants Brief p.7,paragraph 2, LIE when says Dr. Crump and Attorney Goodwin asked Petitioner several questions to determine how he wanted his Academic Grievances handled. In no way nor at any time did they go over how the grievances were to be handled. (see Patricks and Petitioners Affidavits). The only questions Attorney Goodwin and Dr. Crump asked were about what harm Petitioner had suffered by not receiving records on time, a Civil Cause, illegal questioning without telling Student an attorney would be present to

question petitioner about Legal Matters.

It is a Moot Issue, Petitioners request to Dr. Crump for continuance, whereas Petitioner followed State's Due Process Procedure provided by Commission On Higher Education and filed Grievances in the Chancllors office against Dr.Crump, Attorney Goodwin, Dr. Sayers and President Thomas and all the other Academic Grievances filed

LIE, p.7, of Respondants Brief when stating the Academic Grievances were not grievances because not grade related. Page 8, is LIEING when stating Petitioner would contact Dr. Crump.(see Patricks and Petitioners Affidavits),Respondants Brief p.8, LIES, when implying not Academic Grievances p.9, LIE when stating Petitioner has no right to hearing. Proof there is no Due Process at the University of Alabama.

Respondants Brief p.9, Petitioner proved records were altered, destroyed, withheld, created, changed, disclosed, distribed and had substantial evidence that he was Discriminated against. (see Prewitt's and

Petitioners Affidavits). Page 8, of Respondants Brief, Lies when stating reply brief appeal did not concern non-academic grievances, whereas all grievances of Petitioners are Academic Grievances as stated above refering to Universitys Own Policies, Substantial Material Facts that the Respondants and Attorneys have constantly and consistantly LIED, at Will!

Respondants Brief p.10, is full of LIES.

Prewitts Affidavit, substantial Material Evidence, that Ms.Adams was Discriminately Cruel to Petitioner. Mr.Prewitt reveals he failed Nur.214 and he was not given the same equal treatment as Dean Awtry provided for the two female students who failed NUR 214, to take a home study course so the females could come back the next semester to they would remain with the same class. Petitioner was not given special treatment either,so he could return with the same class. Petitioner paid to take the NLN, and was unable to take test and asked for a chance to take a make up, but unlike the

females petitioner was denied his request. A female student was allowed to make the NLN. the only provisions Petitioner was given by Dean Awtry was if he felt he wasn't treated fairly he could file Academic Grievances. Mr. Prewitt reveals that after Petitioner filed his first Academic Grievance, Ms. Nelson approached Mr. Prewitt and encouraged him to reapply. Mr. Prewitt revealed that he and Petitioner were discriminately denied acess to use of Bed Lab numberous times whereas the female student were never shun nor avoided. Prewitt reveals tha Dean Awtry, Ms.Nelson and Ms.Adams lied in their Affidavits claiming a bed was not needed by the two Males, whereas all females had full acess to Bed Lab.

Ms.Adams lied at her deposition when she stated she saw Petitioner tear up a Medical Chart and claiming she took it to the Head Nurse. Bibb County Medical Center (BCMC), Attorney General of Alabama and Director of Alabama Board of Nursing was Subpoenaed to produce all records pertain-

ing to Petitioner. None produced the torn Medical chart nor a report of Petitioner destroying Medical Records, because Ms. Adams LIED, Willfully Slandered Petitioner at will. The fact is Ms.Adams instructed Petitioner to Illegally Destroy Medical Records, but Petitioner did not mention this in his Academic Grievance as he did of Ms. Adams Slandering him in Class whereas she created her first after the fact evaluation Countering her slandering Petitioner. Ms. Adams didn't write medical records destruction in her evauations, whereas Petitioner never mentioned her demanding this Illegal Act until her Deposition. See all Ms. Adams Created evaluations, she mentions reprimanded for siting on counter.Ms. Adams Instructed Petitioner to falify medical charts throughout his Clintical. Ms. Adams first created evaluation, she willfully omitted the 100% Petitioner made on his teaching project. Mr. Prewitt reveals Ms Adams stated she couldn't grade petit-

ioner fairly. Ms. Adams at Deposition Admitted she Destroyed Petitioners records. Final Exam was lost. Dean Mobley LIED to Petitioner numerous times, willfully violated Numerous Federal Protected Rights. Ms. Adams first fabercated evaluation was sent to Petitioner by Dean, whereas Attorney Goodwin noticed the date 1/22/88, withheld first evaluation, had other evaluations created by Marsha Adams and Janice Nelson, whereas Goodwin sent a letter to Petitioner stating he has sent all his educational records. LIE, supported by Overwhelming Material Facts (around 100 more pages of records after Law Suit Discovery and records are still withheld or Destroyed).

Janice Nelson willfully, maliciously intentionally created records, LIED, whereas some of created records After the Fact were produced through petitioner's Discovery Request #3, Records from University Office of Counsel. Also produced for #3,letters from the Governor

Attorneys Powell and Skidemore. Neither Attorney abided by the Governors orders nor did they contact Petitioner nor did they give him any records nor did they begin any grievance process.

Respondants Brief p.11, LIES when states "Petitioner's contentions are unfound in law and in fact. LIE! LIE p.12, "Petitioner does not here ...articulate any specific material facts...".p.12, stating"non-academic grievances(LIE) and the merits of the merits of the Academic Grievances as proof of the disputed material facts...points to nothing else. LIEE. Page 13, of respondants brief,LIES, failed to produce any evidence and LIES, p.13 Petitioner followed state procedure, filed grievances in Chancellors Office, Chancellor sent petioner letter telling him "not to treat as filing anything with university of Alabama." Whereas this includes the continuance request. Therefore Petitioner followed state policy and filed all

grievances and grievances against the Chancellor in the Chairmans office Gov. Hunt. Whereas the Governor never contacted Petioner about grievances, nor did he give Petitioner any records, therefore Petitioner Filed Academic Grievances against the Chairman Governor Hunt, nor did the Chairman contact Petitioner about continuance request, again a moot issue. Law Suit Discovery revealed letters to Attorneys Powell and Skidmore from the Governor Ordering them to produce Petitioners records and get his grievances started. Neither did as they were ordered. (see Ex. 21-30,40 also see complaint and exhibits) (see CR 992-1011, 1037-1045).. In April 1987, Dr. Asam and Petitioner went to Chancellors office to try to get grievances started without having the courts intervenge whereas Attorney Potts told Petitioner that he wasn't going to be intiminated whereas he had 37 suits against them now and 14 more Lawyers.

CONCLUSION

The Writ for Certioria should be granted as stated above and Merits Brief allowed to be writen, whereas there is is no Due Process In Alabama , when the University of Alabama is a Defendant, which is an extremely Political and Financial Powerful Institution.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the above Writ of Certiorari was sent to Mr. George Gordon, Office of Counsel The University of Alabama, P.O. Box 870106, Tuscaloosa, Alabama 35487 this 22 day of September, 1992.

James Davis Nelson Jr.